Pemungut Duti Setem v Lee Koy Eng (as administrator to the estate of Tan Kok Lee @ Tan Chin Chai, deceased) and another appeal

FEDERAL COURT (PUTRAJAYA) — CIVIL APPEAL NO 01(f)-9–07 OF 2021(B) AND CIVIL APPLICATION REVIEW 08(R)-2–02 OF 2022(B)
ROHANA YUSUF PCA, HASNAH HASHIM AND MARY LIM FCJJ
7 JULY 2022

Civil Procedure — Appeal — Case stated — Appellant granted leave to appeal at Federal Court — Respondent applied to set aside leave granted by citing lack of jurisdiction as main ground — Whether court had jurisdiction to hear appeal — Stamp Act 1949 ss 36(1), 38A & 39

Tan Kok Lee @ Tan Chin Chai ('the deceased') who died intestate left three beneficiaries, namely the respondent who was the deceased's widow and their two children. The two children agreed to distribute the properties owned by the deceased solely to the respondent. A court order was issued to vest the properties on the respondent. Pursuant to the vesting order, the instruments of transfer, Forms 14A under the National Land Code, were required to be executed to affect the transfer of the properties to the respondent. By virtue of s 36(1) of the Stamp Act 1949 ('the Act'), the appellant imposed ad valorem stamp duty on the instruments of transfer, assessing the amount payable under item 66(c) in the First Schedule to the Act as the transfer was treated as a 'release or renunciation by way of gift'. The respondent disagreed and asked for a review under s 38A of the Act, claiming that the transfer should be assessed under item 32(i) where the amount was RM10. The review was dismissed by the appellant and the respondent then filed an appeal at the High Court. Meanwhile, as required by s 39 of the Act, the respondent paid the stamp duty as assessed by the appellant. The High Court allowed the appeal and the decision was affirmed by the Court of Appeal. The appellant was granted leave to appeal by the Federal Court. The respondent filed a motion praying for a setting aside of the leave granted, citing lack of jurisdiction as the main ground.

Held, dismissing the application:

(1) The matter of jurisdiction was not properly the subject of res judicata. If the court had no jurisdiction, it had no jurisdiction and despite the grant of leave, the issue of jurisdiction always remained open for the court hearing the substantive appeal, to relook at the issue. Consequently, the court had ample jurisdiction to hear the issue (see paras 8–9).

(2) Although the notice of appeal was lodged at the High Court and thence categorised as an appeal, s 39 of the Act provided the appealing party the right to require the collector of stamp duty ('the collector') to state and sign a case, setting forth the question upon which was opinion was required, and the decision made by him. Where that right was invoked, the collector stated the case, setting out the question upon which the court's opinion was required, and the collector's decision on that question. When the case stated was ready, a copy was sent to the appealing party and the case may then be set down for hearing by the High Court. These steps were followed in this appeal (see para 11).

(3) As a case stated, the High Court was not required to hear evidence and make findings on factual evidence heard. The High Court's sole function in a case stated was to answer the question(s) posed. That being so, the case stated from the collector under s 39 of the Act ought to have been filed at the High Court by way of an originating summons. Unfortunately, it was not so filed, lending to the state of confusion insofar as the matter of what jurisdiction of the High Court had been invoked when dealing with the question of law posed in the case stated. Although the case stated was filed as an appeal; this did not alter the true nature of proceedings before the High Court. Consequently, the case stated was appealable to the court, and the court was vested with jurisdiction to hear the appeal after leave was granted on the questions posed (see paras 12 & 29–30).

[Bahasa Malaysia summary

Tan Kok Lee @ Tan Chin Chai ('si mati') yang meninggal dunia tidak berwasiat meninggalkan tiga waris iaitu responden yang merupakan balu si mati dan dua anak mereka. Kedua-dua anak bersetuju untuk mengagihkan harta milik si mati semata-mata kepada responden. Perintah mahkamah telah dikeluarkan untuk meletakhakkan harta tersebut kepada responden. Menurut perintah peletakhakan, instrumen pindah milik, Borang 14A di bawah Kanun Tanah Negara, perlu dilaksanakan untuk menguatkuasakan pindah milik hartanah kepada responden. Berdasarkan s 36(1) Akta Setem 1949 ('Akta'), perayu mengenakan duti setem ad valorem ke atas instrumen pindah milik, mentaksir jumlah yang perlu dibayar di bawah item 66(c) Jadual Pertama Akta kerana pindah milik dianggap sebagai 'pelepasan atau penolakan melalui hadiah'. Responden tidak bersetuju dan memohon semakan di bawah s 38A Akta, dengan mendakwa bahawa pindah milik harus ditaksir di bawah item 32(i) di mana jumlahnya adalah RM10. Semakan itu telah ditolak oleh perayu dan responden kemudiannya memfailkan rayuan di Mahkamah Tinggi. Sementara itu, seperti yang dikehendaki oleh s 39 Akta, responden membayar duti setem seperti yang ditaksir oleh perayu. Mahkamah Tinggi membenarkan rayuan dan keputusan itu disahkan oleh Mahkamah Rayuan. Perayu telah diberi kebenaran untuk merayu oleh Mahkamah Persekutuan. Responden

A memfailkan usul memohon untuk mengetepikan kebenaran yang diberikan, dengan menyatakan ketiadaan bidang kuasa sebagai alasan utama.

Diputuskan, menolak permohonan:

B (1) Perkara bidang kuasa tidak sepatutnya menjadi subjek res judicata. Sekiranya mahkamah tidak mempunyai bidang kuasa, ia tetap tidak mempunyai bidang kuasa dan walaupun diberi kebenaran, isu bidang kuasa sentiasa terbuka untuk mahkamah mendengar rayuan substantif, untuk melihat semula isu itu. Oleh itu, mahkamah mempunyai bidang C kuasa untuk mendengar isu (lihat perenggan 8–9).

(2) Walaupun notis rayuan dikemukakan di Mahkamah Tinggi dan kemudiannya dikategorikan sebagai rayuan, s 39 Akta terebut memperuntukkan pihak yang merayu dengan hak menghendaki pemungut duti setem ('pemungut') menyatakan dan menandatangani D kes, mengemukakan soalan yang pendapat diperlukan, dan keputusan yang dibuat olehnya. Apabila hak ini dibangkitkan, pemungut menyatakan kes, mengemukakan soalan yang memerlukan pendapat mahkamah, dan keputusan pemungut mengenai soalan itu. Apabila kes dinyatakan telah siap, satu salinan telah dihantar kepada pihak yang E merayu dan kes itu kemudiannya boleh ditetapkan untuk dibicarakan oleh Mahkamah Tinggi. Langkah-langkah ini diikuti dalam rayuan ini (lihat perenggan 11).

(3) Sebagai kes dinyatakan, Mahkamah Tinggi tidak dikehendaki F mendengar keterangan dan membuat penemuan mengenai keterangan fakta yang didengar. Fungsi utama Mahkamah Tinggi dalam kes dinyatakan adalah untuk menjawab soalan yang dikemukakan. Oleh itu, kes dinyatakan daripada pemungut di bawah s 39 Akta sepatutnya difailkan di Mahkamah Tinggi melalui saman pemula. Malangnya, ia G tidak difailkan sedemikian, menyebabkan kekeliruan berkenaan bidang kuasa Mahkamah Tinggi yang dibangkitkan ketika menangani persoalan undang-undang yang diketengahkan dalam kes dinyatakan. Walaupun kes dinyatakan telah difailkan sebagai rayuan; ini tidak mengubah sifat sebenar prosiding di hadapan Mahkamah Tinggi. Oleh itu, kes H dinyatakan boleh dirayu kepada mahkamah, dan mahkamah mempunyai bidang kuasa untuk mendengar rayuan selepas kebenaran diberikan ke atas soalan yang dikemukakan (lihat perenggan 12 & 29–30).]

Cases referred to

I *Asia Pacific Higher Learning Sdn Bhd (registered owner and licensee of the higher learning institution Lincoln University College) v Majlis Perubatan Malaysia & Anor* [2020] 2 MLJ 1, FC (refd)

Badiaddin bin Mohd Mahidin & Anor v Arab Malaysian Finance Bhd

[1998] 1 MLJ 393; [1998] 2 CLJ 75, FC (refd)
Capital Insurance Bhd v Aishah bte Abdul Manap & Anor [2000] 4 MLJ 65, FC (refd)
Cheok Doris v Commissioner of Stamp DutieS [2010] 4 SLR 397; [2010] SGCA 28, CA (refd)
Chua Lip Kong v Director-General of Inland Revenue [1982] 1 MLJ 235, PC (refd)
Collector of Stamp Duties v Ng Fah In & Ors [1981] 1 MLJ 288, FC (refd)
Director-General of Inland Revenue v Rakyat Berjaya Sdn Bhd [1984] 1 MLJ 248, FC (refd)
Edwards (Inspector of Taxes) v Bairstow and another [1956] AC 14, HL (refd)
Government of India v Petrocon India Ltd [2016] 3 MLJ 435, FC (refd)
Lee Yee Sheng & Anor v Commissioner of Inland Revenue [2008] 2 HKC 436 (refd)
Martego Sdn Bhd v Arkitek Meor & Chew Sdn Bhd and another appeal [2020] 6 MLJ 224, FC (refd)
R v Rigby (1956) 100 CLR 146 (refd)
Raphael Pura v Insas Bhd & Anor [2003] 1 MLJ 513, FC (refd)
UN Finance Bhd v Director-General of Inland Revenue [1975] 2 MLJ 224, FC (refd)

Legislation referred to

Courts of Judicature Act 1964 ss 23, 24, 27, 28, 29, 96(a), Part II
Federal Constitution art 121
National Land Code Form 14A
Rules of Court 2012 O 5, O 55A, O 55A r 1
Rules of the Federal Court 1995 r 137
Stamp Act 1949 ss 36(1), 38A, 39, 39(1), (3), (4), First Schedule, items 32(i), 66(c)

Appeal from: *Pemungut Duti Setem v Lee Koy Eng (as administrator for the estate of Tan Kok Lee @ Tan Chin Chai, deceased)* [2022] 2 MLJ 453 (Court of Appeal, Putrajaya)

Hazlina bt Hussain (with Ridzuan bin Othman and Mohamad Asyraf bin Zakaria) (Deputy Revenue Solicitor, Inland Revenue Board of Malaysia) for the appellant.
Thayalan s/o Muniandy (with Theomus Foo, Abigail Kung and Teaw Zhen Yang) (Chambers of Jason Chew) for the respondent.

Mary Lim FCJ (delivering judgment of the court):

[1] On 28 June 2021, the appellant was granted leave to appeal after the Federal Court was satisfied that the three questions posed met the threshold requirements set out in s 96(a) of the Courts of Judicature Act 1964 (Act 91).

A On 18 October 2021, a separate panel of the Federal Court in granting leave to appeal to the same appellant before us in respect of *Pemungut Duti Setem, UTC Johor Bahru v Ku Ek Mei* (Civil Application No 08(f)-247–09 of 2020 (J)) ('second appeal') ordered that that appeal be heard together with the present appeal. In that appeal, the following threshold question was allowed together
B with several other questions:

> Whether the High Court in hearing the appeal by way of case stated pursuant to section 39 of the Stamp Act 1949 is exercising its original or appellate jurisdiction.

C **[2]** When the two appeals came up for hearing before us, the second appeal was withdrawn. Meanwhile, the respondent in the present appeal filed a Motion 05(R)–02 of 2022(B) pursuant to r 137, praying for a setting aside of the leave granted on 28 June 2021, citing lack of jurisdiction as the main ground. The appellant agreed that the issue of jurisdiction be dealt with as a
D preliminary issue in the main appeal. We then proceeded to hear the review application and adjourned the main appeal pending the outcome of the decision in this application.

[3] After hearing extensive submissions from both counsel in addition to the
E written submissions filed, we adjourned to allow us time to deliberate on what we see as a very important issue, with extensive ramifications. Having deliberated at length, this is our decision on the preliminary issue of jurisdiction.

F SOME FACTUAL BACKGROUND

[4] The respondent's claim started when the appellant imposed ad valorem stamp duty on Form 14A executed by the respondent together with one Mr Tan, as co-administrators of the estate of Mr Tan Kok Lee @ Tan Chin Chai
G who died intestate on 17 May 2018 leaving three beneficiaries, namely the respondent who is the deceased's widow and their two children. The deceased owned five properties which under a deed of family arrangement dated 2 October 2018, the two children agreed to,inter alia, distribute those five properties solely to their mother. A court order dated 20 December 2018 was
H issued to vest those properties on the respondent. Pursuant to the vesting order, the co-administrators were required to execute instruments of transfer, Form 14A under the National Land Code to affect the transfer of the five properties to the respondent.

I **[5]** By virtue of s 36(1) of the Stamp Act 1949 (Act 378), the appellant imposed ad valorem stamp duty on those instruments of transfer, assessing the amount payable under item 66(c) in the First Schedule to Act 378 as the transfer was treated as a 'release or renunciation by way of gift'. The respondent disagreed and asked for a review under s 38A, claiming that the transfer should

be assessed under item 32(i) where the amount is RM10 and not under item 66(c).

[6] The review was dismissed by the appellant. The respondent then invoked her right of appeal under s 39(1) and filed two separate appeals; which appeals were later consolidated as one. Meanwhile, as required by s 39, the respondent paid the stamp duty as assessed by the appellant.

[7] On 20 December 2019, the High Court allowed the appeal. The respondent's appeal to the Court of Appeal was later dismissed. On 28 June 2021, the Federal Court granted leave to appeal on three questions of law posed by the appellant.

APPEALABILITY OF AN APPEAL BY WAY OF CASE STATED UNDER S 39 OF THE STAMP ACT 1949

[8] We understand at the time of the application for leave to appeal, the matter of appealability of this appeal was raised by learned counsel for the respondent as a preliminary objection in opposition to the application for leave under s 96(a) of the Courts of Judicature Act 1964 (Act 91). After hearing submissions, that preliminary issue was dismissed. In opposition to the respondent's application for review of that grant of leave, the appellant has raised inter alia the matter of res judicata. We want to place on record that the matter of jurisdiction is not properly the subject of res judicata. If the court has no jurisdiction, it has no jurisdiction and despite the grant of leave, the issue of jurisdiction always remain open for the court hearing the substantive appeal, to relook at the issue. There are more than enough authorities to that effect — see for instance, *Badiaddin bin Mohd Mahidin & Anor v Arab Malaysian Finance Bhd* [1998] 1 MLJ 393; [1998] 2 CLJ 75; *Capital Insurance Bhd v Aishah bte Abdul Manap & Anor* [2000] 4 MLJ 65; *Raphael Pura v Insas Bhd & Anor* [2003] 1 MLJ 513; *Government of India v Petrocon India Ltd* [2016] 3 MLJ 435; *Martego Sdn Bhd v Arkitek Meor & Chew Sdn Bhd and another appeal* [2020] 6 MLJ 224; *Asia Pacific Higher Learning Sdn Bhd (registered owner and licensee of the higher learning institution Lincoln University College) v Majlis Perubatan Malaysia & Anor* [2020] 2 MLJ 1.

[9] Consequently, we have ample jurisdiction to hear this preliminary issue.

[10] In order to address the matter of appealability of this appeal, we need to look back at how the matter originated. It is there then that we can better appreciate what jurisdiction of the High Court was invoked at the material time. We go back to s 39 of Act 378:

39 Appeal to High Court

A (1) Any person who is dissatisfied with the decision of the Collector under subsection 38A(5) may, within twenty-one days after the person is notified in writing of that decision and upon payment of duty in conformity therewith, appeal against the decision to the High Court by filing a notice of appeal with the High Court and may for that purpose require the Collector to state and sign a case, setting
B forth the question upon which is opinion was required, and the decision made by him.

(1A) Where a notice of appeal has been filed under subsection (1), the notice shall be served on the Collector within the time stipulated for the filing of the notice of appeal.

C (2) The Collector shall thereupon state and sign a case and deliver the same to the person by whom it is required, and the case may, within seven days thereafter or within such further time as the Court may allow, be set down by him for hearing.

(3) Upon the hearing of the case the Court shall determine the question submitted, and, if the instrument in question is in the opinion of the Court chargeable with any
D duty, shall assess the duty with which it is chargeable.

(4) If it is decided by the Court that the assessment or additional assessment of the Collector is erroneous, any excess of duty which may have been paid in conformity with the erroneous assessment, together with any fine or penalty which may have been paid in consequence thereof, shall be ordered by the Court to be repaid to the
E appellant, with or without costs as the Court may determine.

(5) If the assessment or additional assessment of the Collector is confirmed the Court may make an order for payment to the Collector of the costs incurred by him in relation to the appeal.

F

[11] In real terms, any appeal under s 39 is always invoked by the person paying the stamp duty and not by the Collector; we cannot envisage an appeal by the Collector himself against his own decision. Although the notice of appeal is lodged at the High Court and thence categorised as an appeal, s 39
G provides the appealing party the right to require the Collector to state and sign a case, setting forth the question upon which is opinion was required, and the decision made by him. Where that right is invoked, the Collector states the case, setting out the question upon which the court's opinion is required, and the Collector's decision on that question. When the case stated is ready, a copy
H is sent to the appealing party and the case may then be set down for hearing by the High Court. These steps were followed in this appeal.

[12] As a case stated, the High Court is not required to hear evidence and make findings on factual evidence heard. The nature of a case stated is
I well-explained in the following cases and we feel it timely to remind ourselves what exactly a case stated entails despite its ancient roots. The proper appreciation of what a case stated is necessary as it then attends to the myriad of related issues as to conduct of the case stated at the High Court and more significantly, the jurisdiction of the High Court that is invoked. As we will soon

see, there has been a lack of proper and due understanding of what a case stated means and entails that has, to a large extent, caused much confusion to the state of law as we now have.

[13] Interestingly, in *Lee Yee Sheng & Anor v Commissioner of Inland Revenue* [2008] 2 HKC 436, the Court of Final Appeal, Hong Kong called on a relook at this system or process of case stated, describing it as an 'anachronism':

> ... The case stated procedure arose out of circumstances that have long gone. It is now easily overlooked that appeal was not a common law remedy:
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> > *Commissioner for Railways (NSW) v Cavanough* (1935) 53 CLR 220 at 225. It is the product of statute. Under the common law, legal defects in the conduct of cases had to be remedied by the writ of error or the bill of exceptions or motions for a new trial or arrest of judgment. (*Conway v R* (2002) 209 CLR 203 at 209, *Australian Iron and Steel Ltd v Greenwood* (1962) 107 CLR 308 at 315–317) and later by the Case Stated procedure. That procedure probably had its origins in the practice of *nisi prius* judges referring disputed questions of law to their brethren at Westminster for informal discussion and advice: see *Conway v R* (2002) 209 CLR 203 at 209–210. In days when tribunals and courts seldom had access to transcripts, where there were no appeals and where lay tribunals needed advice on questions of law, the Case Stated procedure no doubt served a useful purpose. But times and circumstances change. The Case Stated procedure now seems an anachronism. Certainly, it creates delay, takes up the time of tribunals and parties and increases the expense of conducting litigation. Often enough, dissatisfaction with the contents of the Case Stated leads to interlocutory litigation. An appeal, limited to questions of law, avoids these delays, expense and potential for interlocutory litigation. The chief downsides of an appeal, as opposed to the Case Stated procedure, are the cost of providing a transcript to the appellate court and the time that is often wasted by that court in determining what facts were found. However, these downsides are present in the appeal system generally. Despite their presence, an appeal, limited to questions of law, seems more likely to further the administration of justice than the Case Stated procedure.

[14] That same decision of the Hong Kong Court of Final Appeal traced the principles at play in a case stated procedure, that it 'should set out each fact found, in so far as it is relevant to, and necessary for, the determination of the question or questions stated'; pressing on to set out the principles as 'authoritatively expounded' in a passage in the unanimous judgment of the High Court of Australia in *R v Rigby* (1956) 100 CLR 146 at pp 150–151.

[15] Be that as it may and until there is statutory intervention, we must get on with the understanding of the case stated procedure which is further explained by the Privy Council in *Chua Lip Kong v Director-General of Inland Revenue* [1982] 1 MLJ 235:

> Their Lordships cannot stress too strongly how important it is that in every Case Stated for the opinion of the High Court, the Special Commissioners should state clearly and explicitly what are the findings of fact upon which their decision is based and not the evidence upon which those findings, so far as they consist of primary facts, are founded. Findings of primary facts by the Special Commissioners are unassailable. They can be neither overruled nor supplemented by the High Court itself: occasionally they may be insufficient to enable the High Court to decide the question of law sought to be raised by the Case Stated, but in that event it will be necessary for the Case to be remitted to the Commissioners themselves for further findings. It is the primary facts so found by the Commissioners that they should set out in the Case Stated as having been 'admitted or proved'.
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> From the primary facts admitted or proved the Commissioners are entitled to draw inferences: such inferences may themselves be inferences of pure fact, in which case they are as unassailable as the Commissioners' findings of a primary fact but they may be, or may involve (and very often do), assumptions as to the legal effect or consequences of primary facts, and these are always questions of law upon which it is the function of the High Court on consideration of a Case Stated to correct the Special Commissioners if they can be shewn to have proceeded upon some erroneous assumption as to the relevant law. It is therefore desirable that in a Case Stated the Special Commissioners should set out in a separate paragraph from that which contains their findings of primary facts such inferences as they have drawn from those primary facts in the process of arriving at their decision, so that the Court may be able to identify the true nature of the inferences: viz — whether they are pure inferences of fact or whether they involve assumptions as to the legal effect or consequences of fact; and, in the latter event, what those assumptions were.

[16] The Federal Court in *Director-General of Inland Revenue v Rakyat Berjaya Sdn Bhd* [1984] 1 MLJ 248 also explained that:

> Appeals from the decisions of the Special Commissioners in tax cases are made by way of case stated under the Income Tax Act 1967 Schedule 5, para 34. The paragraph states clearly that any appeal is on a question of law. Hence, pure findings of fact may not be challenged on an appeal. However, the court has clear and undoubted jurisdiction to reverse a decision on questions of law. The term 'question of law' includes the correctness of: (a) pure statements of law (eg as to the correct interpretation of a statutory provision); and (b) the inferring of a conclusion from the primary facts (where the process of inference involves assumptions as the legal effect or consequences of the primary facts).

[17] The Federal Court further explained that 'the power of the court to interfere is quite limited where the findings of the Special Commissioners are basically findings of facts. The court will interfere only if there is no evidence to justify the finding or where they have applied erroneous tests in arriving at their conclusions or have drawn a wrong inference on the facts or have misdirected themselves in law ...'.

[18] Thus, when we read the Federal Court decision in *Collector of Stamp*

Duties v Ng Fah In & Ors [1981] 1 MLJ 288, we must do so with caution. The issue of how a case stated ought to have been conducted, the ambit of the court's jurisdiction did not arise and was thus not addressed. At p 291, the Federal Court noted that the High Court judge had taken evidence in order to come to a decision on the value of the land which was subject to the imposition of ad valorem stamp duty. The High Court judgment is reported together with the judgment of the Federal Court at pp 288–290 and it is quite apparent that a full-blown trial had taken place at the High Court, despite the case stated process.

[19] The courts should not be unduly troubled by this understanding of limitation on its powers when exercising its jurisdiction in a case stated. The reason why the courts do not 'interfere with commissioners' findings or determinations when they really do involve nothing but questions of facts is not any supposed advantage in the commissioners having greater experience in matters of business or any other matters. The reason is simply that by the system that has been set up the commissioners are the first tribunal to try an appeal. And in the interests of the efficient administration of justice their decisions can only be upset on appeal if they have been positively wrong in law. The court is not a second opinion, where there is reasonable ground for the first. But there is no reason to make a mystery about the subjects that commissioners deal with or to invite the courts to impose any exceptional restraints upon themselves because they are dealing with cases that arise out of facts found by commissioners. Their duty is no more than to examine those facts with a decent respect for the tribunal appealed from and if they think that the only reasonable conclusion on the facts found is inconsistent with the determination come to, to say so without more ado' — per Lord Radcliffe in *Edwards (Inspector of Taxes) v Bairstow and another* [1956] AC 14.

[20] The Federal Court in *UN Finance Bhd v Director-General of Inland Revenue* [1975] 2 MLJ 224 made similar remarks to like effect:

> It may be trite to say but it will be of use to remind ourselves that an appellate court in income tax cases has only a limited function to perform. It is bound by the findings of facts by the Special Commissioners and set out in the statement of the case ...

[21] Lastly, on this point of what and how a case stated is to be handled, Chan Sek Keong CJ in *Cheok Doris v Commissioner of Stamp DutieS* [2010] 4 SLR 397; [2010] SGCA 28 said:

> ... the only purpose of the case stated was to facilitate the court to answer the stated questions on the basis of facts as stated. There is no burden of proof on any party as the issues to be decided are issues of law.
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> [15] In our view, the Judge has adopted the wrong approach. Whilst his approach would have been completely justified if these proceedings had been ordinary

A adversarial proceedings with respect to disputed issues of fact, a case stated is a different kind of court proceedings. A case stated is an established forensic device whereby questions of law are referred to the court for determination on stated facts on the basis that the facts are true. For this reason, the circumstance that the vendor is not a party in the proceedings is not material to the case stated. If the stated facts B are not sufficient to enable the court to answer the questions referred to it, then the court should direct that the case stated be amended to include the necessary additional facts for the questions to be answered. The court should not dismiss it on the ground that inadequate facts have been stated or another interested party has not been made a party to the proceedings. The case stated states an issue or issues of law between the stated parties.

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[22] While the above observations were made in the context of the tax regime where the decisions of the Special Commissioners are appealed upon through the case stated mechanism, we find the principles as discussed apply D equally to the appeal by case stated process stipulated under s 39 of Act 378. Although s 39 talks about the Collector identifying or setting forth the question upon which the opinion of the High Court is required, and the Collector's decision on that question, without specifying that the question set out is a question of law, the question is necessarily one of law having regard to E the case stated process. This is fortified when we turn to the other provisions in s 39. For instance, the High Court is required to assess the duty chargeable in the event it forms the opinion that the instrument in question is chargeable with duty. Where the court opines that the assessment or additional assessment by the Collector is erroneous, any excess paid shall be ordered to be repaid to F the appellant — see s 39(3) and (4).

[23] These reminders on how case stated proceedings are to be conducted, particularly the fact that the High Court is tasked with fact finding but instead is solely required to answer what really is a question of law posed, must be well G heeded and followed. Should there be any insufficiency of facts, the case stated ought to be sent back to the Collector for clarification and for further gathering of evidence; it is not a trial before the High Court.

[24] It is the failure to understand what a case stated is that has led to the H misunderstanding of the particular jurisdiction under which the High Court is exercising when hearing a case stated. While there is a right of appeal, it is a limited right of appeal. It is limited by statute in that only a question or issue may be sent to the High Court for determination.

I **[25]** The problem or confusion is compounded when the case stated is sent to the High Court. Correctly, it should have been by way of an originating motion since it only concerns a question of law. However, under the new Rules of Court 2012, the originating process of an originating motion has been deleted. Under O 5, all originating processes are now either by writ or by

originating summons. From what we see in the records before us, the case stated was lodged as an appeal. It is this manner in which the appeal by way of case stated was lodged at the High Court that, in our respectful view, the cause of the misconception that the matter before the court was a full appeal, and not a limited appeal by case stated on a question of law for the High Court's determination.

[26] The jurisdiction and powers of the High Court are as provided under art 121 of the Federal Constitution, that is, 'as may be conferred by or under federal law'. Amongst the 'federal law' enacted to confer jurisdiction and power on the courts are the Courts of Judicature Act 1964 (Act 91) and for the purpose of this appeal, the Stamp Act 1949 (Act 378). Part II of the Courts of Judicature Act 1964 (Act 91), specifically ss 23, 24, 27–29 and even more specifically, s 27, provides for the appellate jurisdiction of the High Court but it is only in relation to hearing appeals from subordinate courts:

> 27 Appellate civil jurisdiction
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> The appellate civil jurisdiction of the High Court shall consist of the hearing of appeals from subordinate courts as hereinafter provided.

[27] The jurisdiction of the High Court to hear appeals from tribunals or statutory bodies are to be found in the relevant laws; in this case, in s 39 of Act 378. The procedure involved is set out in O 55A of the Rules of Court 2012 and O 55A r 1 provides that the appeal to the High Court is by way of an originating summons:

> Appeals to the High Court under written law (O 55A r 1)
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> (1) Where under any written law an appeal lies from any decision of any person or body of persons to the High Court such appeal shall be made to the High Court in the State where the decision was given by way of an originating summons setting out the grounds of the appeal and supported by an affidavit, and if the Court so directs at the hearing of the appeal, by way of oral evidence.

[28] This originating mode is consistent with s 29 of the Courts of Judicature Act 1964 (Act 91) which provides that 'all civil appeals from a subordinate court shall be by way of rehearing'; guided of course, by the principles of appellate intervention as established through caselaw.

[29] However, this is not the position for appeal by way of a case stated procedure. As elaborated earlier, the case stated procedure does not involve the High Court making any inquiry as to facts. The facts would be as found by the Collector and as stated. The High Court's sole function in a case stated is to answer the question(s) posed. That being so, the case stated from the Collector under s 39 ought to have been filed at the High Court by way of an originating motion. In view of the present Rules of Court 2012, that originating process is

no longer available. The case stated ought to have been filed by way of an originating summons. Unfortunately, and as pointed out earlier, it was not so filed, lending to the state of confusion insofar as the matter of what jurisdiction of the High Court has been invoked when dealing with the question of law posed in the case stated. Although the case stated was filed as an appeal; this does not alter the true nature of proceedings before the High Court. The case stated here was posed to determine the question of:

> Sama ada duti setem ke atas Memorandum Pindahmilik (Borang 14A) tersebut hendaklah ditaksir di bawah peruntukan item 32(e) atau item 66(c) Jadual Pertama, Akta Setem 1949.

[30] When the High Court hears this case stated, it only answers that question as posed. While the High Court is empowered to make orders and vary the sums already ordered by the Collector, the High Court does so in exercise of its original jurisdiction. It does not sit in appeal. Consequently, the case stated is appealable to this court, and this court is vested with jurisdiction to hear this appeal after leave was granted on the questions posed.

[31] For all the reasons stated we dismiss the application in 08(R)-2–02 of 2022(B) and affirm the decision of this court in granting the said leave questions.

Application dismissed.

Reported by Nabilah Syahida Abdullah Salleh